

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1138**  
94TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industrial Relations, March 27, 2008, with recommendation that the Senate Committee Substitute do pass.

4802S.04C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To amend chapter 292, RSMo, by adding thereto one new section relating to occupational safety and health administration training requirements for certain employees, with penalty provisions and an effective date.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 292, RSMo, is amended by adding thereto one new section, to be known as section 292.675, to read as follows:

**292.675. 1. As used in this section, the following terms shall mean:**

**(1) "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;**

**(2) "Department", the department of labor and industrial relations;**

**(3) "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;**

**(4) "Public body", the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds;**

**(5) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. "Public works" includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility.**

20           2. Any person signing a contract to work on the construction of  
21 public works for any public body shall provide a ten-hour Occupational  
22 Safety and Health Administration (OSHA) construction safety program  
23 for their on-site employees which includes a course in construction  
24 safety and health approved by OSHA or a similar program approved by  
25 the department which is at least as stringent as an approved OSHA  
26 program. All employees are required to complete the program within  
27 sixteen days of beginning work on such construction project.

28           3. Any employee found on a worksite subject to this section  
29 without documentation of the successful completion of the course  
30 required under subsection 2 of this section shall be afforded ten days  
31 to produce such documentation before being subject to removal from  
32 the project.

33           4. The public body shall specify in the resolution or ordinance  
34 and in the call for bids for the contract, the requirements of this  
35 section. The contractor to whom the contract is awarded and any  
36 subcontractor under such contractor shall require all on-site employees  
37 to complete the ten-hour training program required under subsection  
38 2 of this section. The public body awarding the contract shall include  
39 this requirement in the contract. The contractor shall forfeit as a  
40 penalty to the public body on whose behalf the contract is made or  
41 awarded, two thousand five hundred dollars plus one hundred dollars  
42 for each employee employed by the contractor or subcontractor, for  
43 each calendar day, or portion thereof, such employee is employed  
44 without the required training. The public body awarding the contract  
45 shall include notice of these penalties in the contract. The public body  
46 awarding the contract shall withhold and retain therefrom, all sums  
47 and amounts due and owing as a result of any violation of this section  
48 when making payments to the contractor under the contract. The  
49 contractor may withhold from any subcontractor, sufficient sums to  
50 cover any penalties the public body has withheld from the contractor  
51 resulting from the subcontractor's failure to comply with the terms of  
52 this section. If payment has been made to the subcontractor without  
53 withholding, the contractor may recover the amount of the penalty  
54 resulting from the fault of the subcontractor in an action maintained  
55 in the circuit court in the county in which the public works project is  
56 located from the subcontractor.

57           **5. In determining whether a violation of this section has**  
58 **occurred, and whether the penalty under subsection 4 of this section**  
59 **shall be imposed, the department shall investigate any claim of**  
60 **violation. Upon completing such investigation, the department shall**  
61 **notify the public body and any party found to be in violation of this**  
62 **section of its findings and whether a penalty shall be**  
63 **assessed. Determinations under this section may be appealed in the**  
64 **circuit court in the county in which the public works project is located.**

65           **6. If the contractor or subcontractor fails to pay the penalty**  
66 **within forty-five days following notification by the department, the**  
67 **department shall pursue an enforcement action to enforce the monetary**  
68 **penalty provisions of subsection 4 of this section against the contractor**  
69 **or subcontractor found to be in violation of this section. If the court**  
70 **orders payment of the penalties as prescribed under subsection 4 of**  
71 **this section, the department shall be entitled to recover its actual cost**  
72 **of enforcement in addition to such penalty amount.**

73           **7. The department may establish rules and regulations for the**  
74 **purpose of implementing the provisions of this section. Any rule or**  
75 **portion of a rule, as that term is defined in section 536.010, RSMo, that**  
76 **is created under the authority delegated in this section shall become**  
77 **effective only if it complies with and is subject to all of the provisions**  
78 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**  
79 **section and chapter 536, RSMo, are nonseverable and if any of the**  
80 **powers vested with the general assembly pursuant to chapter 536,**  
81 **RSMo, to review, to delay the effective date, or to disapprove and annul**  
82 **a rule are subsequently held unconstitutional, then the grant of**  
83 **rulemaking authority and any rule proposed or adopted after August**  
84 **28, 2008, shall be invalid and void.**

85           **8. This section shall not apply to work performed by public**  
86 **utilities which are under the jurisdiction of the public service**  
87 **commission, or their contractors, or work performed at or on facilities**  
88 **owned or operated by said public utilities.**

Section B. Section A of this act shall become effective on August 28, 2009.

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